

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LENORE N. BAYLESS-NGETHE,

Plaintiff,

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## DEPARTMENT OF VOCATIONAL REHABILITATION, et al.,

## Defendants.

CASE NO. C13-1574 MJP

ORDER ON DEFENDANT CLIENT  
ASSISTANCE PROGRAM'S  
MOTION FOR SUMMARY  
JUDGMENT

THIS MATTER comes before the Court on Defendant Client Assistance Program's Motion for Summary Judgment. (Dkt. No. 31.) After Defendant filed its Motion, pro se Plaintiff Lenore Bayless-Ngethe amended her complaint. (Dkt. No. 35.) In addition to filing an amended complaint, Plaintiff filed a supplement to the Amended Complaint responding to some of the arguments raised by Defendant. (Dkt. No. 38.) Seeing no formal response to its Motion within the time for a response, Defendant filed a Reply to the supplement. (Dkt. No. 27.) More than a week later, Plaintiff filed a Response to both the Motion and other motions to dismiss by other defendants. (Dkt. No. 43.) Having considered these filings and all related papers, the Court

1 hereby GRANTS the motion for summary judgment in favor of Defendant Client Assistance  
2 Program.

3 **Background**

4 Plaintiff alleges she was mistreated in various ways by a number of social service  
5 agencies, including Defendant Client Assistance Program (CAP). (See Am. Compl., Dkt. No.  
6 35.) The claims directly related to CAP are Claim 7, in which CAP allegedly engaged in  
7 unnecessary delay in mailing forms and returning correspondence to Plaintiff (*id.* at 10), and  
8 Claim 8, in which CAP allegedly acted impartially in its decision to close the inquiry into  
9 Plaintiff's complaint against Division of Vocational Rehabilitation and in CAP's failure to set up  
10 a formal conflict resolution meeting (*id.* at 10). Plaintiff brings these claims under Section 1983,  
11 a means by which individuals can be compensated for violations of their federal rights if those  
12 violations were at the hands of state actors. See 42 U.S.C. § 1983.

13 In its Motion for Summary Judgment, CAP argues its actions were not under color of  
14 state law and CAP's alleged conduct does not rise to the level of a constitutional violation. (Dkt.  
15 No. 31 at 4–5.) Plaintiff asserts CAP acts under color of state law because it contracts with the  
16 state of Washington. (Dkt. No.38 at 2.)

17 **Analysis**

18 I. Legal Standard

19 Federal Rule 56(a) provides that the court shall grant summary judgment if the movant  
20 shows that there is no genuine dispute as to any material fact and the movant is entitled to  
21 judgment as a matter of law. Fed. R. Civ. P. 56(a). In determining whether a factual dispute  
22 requiring trial exists, the court must view the record in the light most favorable to the  
23 nonmovant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). All material facts  
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1 || alleged by the nonmoving party are assumed to be true, and all inferences must be drawn in that  
2 || party's favor. Davis v. Team Elec. Co., 520 F.3d 1080, 1088 (9th Cir. 2008).

3 || A dispute about a material fact is "genuine" only if "the evidence is such that a  
4 || reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.  
5 || There is no genuine issue for trial "[w]here the record taken as a whole could not lead a rational  
6 || trier of fact to find for the non-moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,  
7 || 475 U.S. 574, 587 (1986).

8 || II. Color of State Law

9 || Plaintiff brings these claims under 42 U.S.C. § 1983, whose purpose is to "to interpose  
10 || the federal courts between the States and the people, as guardians of the people's federal rights—  
11 || to protect the people from unconstitutional action under color of state law, whether that action be  
12 || executive, legislative, or judicial." Patsy v. Bd. of Regents, 457 U.S. 496, 503 (1982). CAP is not  
13 || a state entity, but a private non-profit organization. (Huven Suppl. Decl., Dkt. No. 40 at 2.)

14 || Plaintiff claims CAP contracts with the state (Dkt. No. 38 at 2), a fact which the Court  
15 || assumes to be true for the purpose of this motion. Contracts alone, however, do not transform a  
16 || private entity into a state actor. See Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1538 (9th Cir.  
17 || 1992). A private organization acts under color of state law for the purposes of § 1983 when it is  
18 || "a willful participant in joint action with the State or its agents." Dennis v. Sparks, 449 U.S. 24,  
19 || 27 (1980). Plaintiff has offered no evidence of joint action. CAP does not even receive funding  
20 || from the state—it is funded instead by the federal government. (Dkt. No. 40 at 2.) See Daly-  
21 || Murphy v. Winston, 837 F.2d 348, 355 (9th Cir. 1987) ("Section 1983 provides a remedy only  
22 || for deprivation of constitutional rights by a person acting under color of law of any state or  
23 || territory or the District of Columbia."). There is no right of action for damages available for  
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1 allegations of constitutional violations by private entities acting under color of federal as  
2 opposed to state law. Correctional Services Corp. v. Malesko, 534 U.S. 61, 66 (2001).

## Conclusion

4 Because there is no genuine dispute over the facts regarding CAP's capacity to act under  
5 the color of state law, the Court GRANTS summary judgment in favor of Defendant CAP and  
6 against Plaintiff Lenore N. Bayless-Ngethe. This Order has no impact on Plaintiff's case against  
7 defendants other than CAP.

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The clerk is ordered to provide copies of this order to Plaintiff and all counsel.

11 Dated this 3rd day of February, 2014.

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Wassily Kandinsky

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Marsha J. Pechman  
Chief United States District Judge

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